IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 372 OF 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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PARSHOTTAM MEGHJI - Petitioner(s)
Versus
ADMINISTRATIVE OFFICER & COMPETENT AUTHORITY, GUJARAT GRAM GRUH NIRMAN BOARD & ANR. - Respondent(s)

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Appearance :
Shri J.R. Nanavati for Petitioner.
Shri K.H. Baxi for Respondent(s) : 1.
None for Respondent(s) : 2 though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/03/2007

ORAL JUDGMENT

The short facts necessary for disposal of the present Writ

Application are that by a registered sale deed dated 29th June, 1981, the petitioner sold Plot Nos.12, 13, 14, 17 and 18 admeasuring 2095 sq. mtrs. for a consideration of Rs.20,000/- to the Gujarat Gram Gruh Nirman Board ("the Board" for short). The Board, after purchasing the property, built twenty houses and alloted the same. The Estate Officer authorised under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 ("the Act" for short) on 27th December, 1982, issued a notice to the petitioner that why he should not be dispossessed from the land in dispute. On 6th January, 1983, a notice under Section 49 of the Gujarat Gram Gruh Nirman Act was again issued to the petitioner. The petitioner filed his reply and submitted that the land, over which he has constructed his house, was neither sold by the petitioner to respondent-Gruh Nirman Board nor the property belonged to the Board. The respondent No.1, after giving appropriate opportunity to the petitioner, passed the final order on 4th July, 1983 and directed eviction of the petitioner from the said premises. The petitioner thereafter preferred an appeal, which was dismissed by the learned Assistant Judge, Jamnagar on 13th February, 1990. Being aggrieved by the said orders, the petitioner is before this Court.

2. The submissions of Shri Nanavati, learned Counsel for the petitioner, are that as the petitioner had raised the question of title, the Estate Officer could not decide the matter. He also submitted that the property did not belong to the Board and as the property does not fall within the definition of "public premises", as given in Section 2(f) of the Act, the petitioner could not be held to be unauthorised occupant over the property. His further submission is that once the question of title is raised, the Estate Officer would be denuded of his jurisdiction and would not be entitled to proceed further in the matter; that in such a case, the Board would be required to file a suit before the ordinary Civil Court

seeking a declaration of title and a decree for possession. He submits that as the proceedings were illegally conducted and an illegal order against the interest of the petitioner had been made, the orders deserve to be quashed.

3. Shri Baxi, learned Counsel for respondent No.1, submitted that the land in dispute was measured in presence of the present petitioner, a *panchnama* was prepared, the correctness of the *panchnama* was not challenged by the petitioner at any point of time. Even the question of title was not raised by him before the Estate Officer. The said question was raised before the learned Appellate Court and in any case, the authorities are required to decide on the basis of proof of *prima facie* title and in a given case, if *prima facie* title is proved, then, the Estate Officer would have fullest jurisdiction to decide the matter.

4. Undisputedly, plot Nos.12, 13, 14, 17 and 18 admeasuring 2095 sq. mtrs. were sold by the petitioner to the Board. It is also not in dispute that no map was attached with the sale deed, but, the parties understood the boundary marks. As many as twenty houses were constructed and the houses only were transferred by the Housing Board to respondent No.2. It is not the case of the petitioner that the land, other than the land over which the houses are built, was also transferred by the Housing Board in favour of respondent No.2. This I am required to consider because the argument of Shri Nanavati is that once the houses are sold, then, the land, streets, land appurtenant to the houses and all other lands were also transferred and as such, respondent No.1 no more continues to be the owner of the property. The argument of Shri Nanavati is in oblivion of the factual aspect. The allotment order made by respondent No.1 is not available on the records. It would be the height of a presumptive argument that the open land was also sold along

with the houses. A sale deed conveys what it intends to convey and nothing beyond that. If the roads, streets and other open lands are not sold, then, it would be wrong to say that all lands stand transferred moment the houses are allotted in favour of respondent No.2.

5. Harping upon Section 2(f) of the Act, it was contended that the key words in the definition of “public premises” would mean “premises belonging to or taken on lease or requisitioned by”. According to him, if the premises are not belonging to any public authority, then, a person cannot be held to be in unauthorised occupation because Section 2(h), which defines “unauthorised occupation” only deals with the public premises. In the opinion of this Court, the words, “public premises”, are to be understood in the sense they have been used.

6. True it is, that the Estate Officer under his summary jurisdiction is not entitled to decide the question of title, but, at the same time, he is not required to stay his hands simply because somebody raises a fictitious claim of the title. The Estate Officer in his discretion may stay the proceedings if is *prima facie* convinced that the title does not belong to the public authority or there is a *bona fide* dispute about the title. If the argument of Shri Nanavati is accepted, then, it will lead to an impossible situation because on the false questions of title or false disputes of title, the Estate Officer would not be able to proceed with the eviction matter.

7. In the present matter, the Estate Officer and the learned Appellate Court have relied upon the *panchnama*. The admissions made by the present petitioner at the time of preparation of the *panchnama* and such other admissions wherein he admitted that the land shown within red boundary marks, namely, 'A', 'B', 'C', 'D', 'E' and 'F', if belongs

to the Housing Board, then, the house of the petitioner falls within the said periphery.

8. The *panchnama* prepared by the Revenue Officers has at all not been challenged. The *panchnama* clearly shows that the land falls within the area, which was sold by the petitioner to respondent No.1.

9. After going through the orders passed by the authorities and the reasons given by the learned Assistant Judge, Jamnagar in Civil Regular Appeal No.126 of 1984, I must hold that there are no reasons to interfere with the orders passed by the authorities. The petition deserves to and is, accordingly, dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S.Garg, J.]

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